

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:08-CV-291-FL

BARBARA AHERN,)
)
Plaintiff,)
)
v.)
)
OMNICARE ESC LLC, a subsidiary of)
OMNICARE, INC.,)
)
Defendant.)

ORDER

This matter comes before the court on the memorandum and recommendation (“M&R”) of the United States Magistrate Judge, which recommends this court grant defendant’s motion to dismiss plaintiff’s amended complaint. The time for objections to the M&R has passed without either party filing an objection. In this posture, the issues raised are ripe for ruling.

Plaintiff’s amended complaint sets forth two claims for relief: (1) that defendant discriminated against plaintiff on the basis of her sex in violation of 42 U.S.C. § 2000e; and (2) that defendant violated the public policy of the State of North Carolina set forth in North Carolina General Statute § 143-422.2, prohibiting sex discrimination in employment. (Am. Compl. ¶¶ 42-48.) Defendant filed a motion to dismiss plaintiff’s amended complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). (DE # 21.)

The magistrate judge reviewed defendant’s motion to dismiss and entered an M&R recommending dismissal of plaintiff’s amended complaint with prejudice. The magistrate judge found *inter alia* that the allegations in plaintiff’s amended complaint failed to make out a claim that

defendant terminated plaintiff because of her sex and failed to allege sufficient facts to make out a claim for a hostile work environment based on widespread favoritism. (M&R 6-14.) The magistrate judge found the same analysis applied to plaintiff's state law claims. (M&R 14.) Finally, the magistrate judge found that dismissal with prejudice was appropriate because the defects in plaintiff's amended complaint do not appear curable and plaintiff has already had the opportunity to amend her complaint once in this action. (M&R 14-15.)

After thorough review of the pleadings, defendant's motion to dismiss, the M&R and the relevant case law, this court agrees with the magistrate judge. The conclusions reached in the M&R are well-supported by the controlling case law as applied to the facts of this case. Consequently, where there are no objections to the M&R, the court ADOPTS the findings and recommendation of in the M&R as its own. Defendant's motion to dismiss is hereby GRANTED, and plaintiff's amended complaint is DISMISSED WITH PREJUDICE. The clerk of court is directed to close the case.

SO ORDERED, this the 17th day of August, 2009.


LOUISE W. FLANAGAN
Chief United States District Judge